No. 05-107

IN THE

Supreme Court of the United States

WARREN DAVIS,

Petitioner,

v.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), *et al.*

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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STATEMENT

The instant case is the third in a set of legal proceedings initiated by Warren Davis in an effort to overturn a decision by the delegates to the 2002 convention of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO (UAW) that denied Davis a union office to which he claims to have been duly elected.

The relevant background facts are succinctly stated in the opinion of the court of appeals:

> "At the 2002 Constitutional Convention of the International Union of the United Automobile Workers of

America (UAW), convention delegates adopted an amendment to the UAW Constitution that dissolved one of the UAW's geographic regions and redistributed its members among three neighboring regions. The amendment also had the effect of setting aside Warren Davis's reelection as a regional director . . . .

* * *

"Davis served for 19 years as an elected member of the governing board of the UAW. After deciding to run for Congress in 2002, Davis announced his intention to vacate his office in the UAW and endorsed his assistant director for his soon-to-be-vacant position. The election for the office, for which Davis's assistant was the sole candidate, was held at the UAW's Constitutional Convention in June of 2002. Due to an apparent last-minute change of heart, however, Davis arranged for his assistant to nominate Davis and then withdraw from the race, resulting in Davis winning the election unopposed.

"During his many years of service with the UAW, Davis had been part of an unofficial caucus of politically powerful members who adhered to an informal agreement not to seek elective office after reaching 65 years of age. Angered by Davis's surprise tactics at the convention and his acceptance of an elected position at the age of 67, several members of the unofficial caucus issued a press release calling upon the UAW convention delegates to eliminate Davis's region, redistribute its members among three other regions, and hold new elections. This proposal was adopted by the UAW Constitutional Convention, which promptly dissolved Davis's region the day after his reelection." Pet. App. 2a-3a.

See also Davis v. International Union, U.A.W., 390 F.3d 908, 909 (6th Cir. 2004), *cert. denied*, 125 S.Ct. 1958 (2005) (description of same facts in an earlier case brought by Davis).

"Title IV of the [Labor Management Reporting and Disclosure Act] specifically regulates the conduct of elections for union officers." *Furniture Moving Drivers v. Crowley*, 467 U.S. 526, 539 (1984). This Court has described the Title IV regulatory scheme as follows:

> "Title IV of the statute establishes a set of substantive rules governing union elections, LMRDA § 401, 29 U.S.C. § 481, and it provides a comprehensive procedure for enforcing those rules, LMRDA § 402, 29 U.S.C. § 482. Any union member who alleges a violation may initiate the enforcement procedure. He must first exhaust any internal remedies available under the constitution and bylaws of his union. Then he may file a complaint with the Secretary of Labor, who 'shall investigate' the complaint. Finally, if the Secretary finds probable cause to believe a violation has occurred, he 'shall . . . bring a civil action against the labor organization' in federal district court, to set aside the election if it has already been held, and to direct and supervise a new election. . . . . [W]ith respect to an election already conducted, '[t]he remedy provided by [Title IV] . . . shall be exclusive.' LMRDA § 403, 29 U.S.C. § 483." *Trbovich v. Mine Workers*, 404 U.S. 528, 531 (1971).

On October 23, 2002, Davis brought suit under Title I of the LMRDA challenging the decision of the UAW convention to abolish his office. On August 1, 2003, the district court dismissed Davis's LMRDA Title I lawsuit on the following grounds:

> "In essence, the complaint challenges the propriety of a vote to amend the UAW constitution. The vote was taken as part of an election process and resulted in a rerun election. Despite plaintiff's characterization of the relief sought, reinstatement of Region 2 would essentially validate the results of an election already conducted in which Davis was elected director. At the same time, this court would have to invalidate the post-amendment elections of successful candidates in the

redrawn Regions 2B, 8 and 9. Such post-election relief must be sought exclusively with the Secretary of Labor in accordance with 29 U.S.C. § 483. The contemplated relief challenges an election already conducted, and thus, the court lacks subject matter jurisdiction pursuant to the limitations of Title IV of LMRDA." *Davis v. International Union, U.A.W.*, 274 F.Supp.2d 922, 925 (E.D. Mich. 2003), *aff'd* 390 F.3d 908 (6th Cir. 2004), *cert. denied*, 125 S.Ct. 1958 (2005).

On May 15, 2003, Davis filed a complaint with the Secretary of Labor requesting that the Secretary secure Davis's installation to union office. On November 5, 2003, the Secretary dismissed Davis's complaint on the following grounds:

> "With respect to whether the delegates violated your right to hold union office under section 401(e) of the LMRDA, 29 U.S.C. §481(e), the Department of Labor regulations at 29 C.F.R. §452.46 state in pertinent part that a union may not establish qualifications for office that are 'inconsistent with any other Federal law' and may not 'establish a retirement age or comparable age restriction on candidacy since this would be inconsistent with the Age Discrimination in Employment Act of 1967, as amended' (ADEA). Under the ADEA, it is unlawful for a labor organization to discriminate against any individual because of his age. 29 U.S.C §623(c). Within the ADEA, there is an exception for certain employees who hold 'high policymaking position[s].' See the ADEA regulations at 29 C.F.R. §1625(d)(2) (quoting the legislative history in H.R. No. 95-950, n. 9, which state that the exception was intended to apply to 'heads of major departments or divisions').
>
> "Although the Department's investigation disclosed the existence of an informal agreement among members of a caucus of members not to run for UAW International office after reaching 65 years of age, it further established that the UAW has no governing rule imposing an age limitation on candidates for office. Similarly,

> the vote of the delegates to reorganize the regions did not establish a 'qualification[ ]' on the right to be a candidate or to hold office and you [Davis] were provided with an opportunity to run for office in a reconstituted region. *See* 29 U.S.C. §401(e). The reorganization, which eliminated your Region, was the result of a vote of the delegates, not the application of a union rule. There was, thus, no violation of the LMRDA." Sixth Circuit Jt. App. 329-330.

Finally, on June 4, 2003, Davis filed the instant case in the Court of Common Pleas for Cuyahoga County, Ohio. Davis's state court complaint alleged, *inter alia*, that he "was successfully elected as Director of Region 2 on June 5, 2002" and that the UAW Convention delegates subsequently voted "to eliminate the position held by Mr. Davis because of his age and the plaintiff's refusal to comply with the age discriminatory UAW rule and custom prohibiting members over the age 65 from running for International Union office and holding staff employment in the union." Sixth Circuit Jt. App. 9.[1] To remedy the allegedly unlawful denial of office, the Complaint demanded "[a]n order directing defendant UAW to reinstate plaintiff to the position which he would have held had the discrimination complained of herein not occurred" and "[a]n order awarding plaintiff all back pay and/or bonuses to which he is entitled to as a result of defendants' unlawful actions and inactions." *Id.* at 16.

The defendants removed Davis's case to federal court, "assert[ing] that the adjudication of Davis's state-law claims would necessarily require a determination regarding the validity of the UAW election, an exclusively federal question under Title IV of the LMRDA." Pet. App. 4a.

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[1] In addition to raising this claim for age discrimination in violation of Ohio Rev. Code § 4112.02, Davis's state court complaint raised a myriad of other state law claims that are not pertinent to the questions presented by the petition for certiorari.

In determining whether Davis's complaint raised a federal question, the district court began by observing that LMRDA Title IV provides "the exclusive remedy for challenging the results of a Union election." Pet. App. 29a. In this regard, the court noted, the "[d]efendants argue[d] that Davis, by seeking reinstatement, is essentially challenging the results of the Union Constitutional Convention delegates' vote, which he may not do by any means other than those set out in [LMRDA Title IV]." *Ibid.* The court concluded that this point had been "moot[ed]," because "[i]n response to the defendants' LMRDA argument, Davis concedes that the remedy of reinstatement is not available to him." *Id.* at 30a.[2] Turning to "whether Davis's prayer for back pay, alone, gives rise to LMRDA preemption," *ibid.*, the district court concluded that it did not, because "[a]n award of damages that includes back pay would not necessarily imply . . . that one or more of the Union's election results were invalid," *id.* at 31a-32a.

Having determined that "Davis's state-law claims do not attack the ultimate validity of any Union election results," the district court concluded that "the defendants' removal of the case to this court was not well-taken" and granted "Davis's motion to remand." Pet. App. 32a.

In reviewing the district court's order, the court of appeals first considered whether it was "barred by 28 U.S.C. § 1447(d) from hearing the UAW's appeal from the district court's remand order." Pet. App. 5a. In deciding this question, the court of appeals applied the well-settled rule that "[w]here a district court had proper jurisdiction at the time of removal, but events occurring after removal make remand to the state courts appropriate, § 1447(d) does not bar appellate review of the district court's remand order." *Id.* at 6a. Under that rule,

[2] Davis later denied that he had made this concession, but the district court did not take account of his denial.

and "[b]ecause the district court remanded this case only after finding that a post-removal event had deprived it of subject matter jurisdiction," the court of appeals concluded that it had "appellate jurisdiction over the district court's remand order." *Id.* at 7a-8a.

Turning to the merits, the court of appeals "disagree[d]" with "the district court['s] conclu[sion] that Davis's claims were not preempted by the LMRDA because the indisputably federal questions of 'whether Davis was elected' and 'whether the defendants eliminated Davis's position' need not be answered in order to adjudicate Davis's claims." Pet. App. 8a. Rather, the court of appeals determined that "Davis's state-law claims in question, including his requested remedy of back pay, logically hinge on his assertion that he was lawfully elected." *Id.* at 10a. For that reason, the court of appeals "reverse[d] the district court's remand of Davis's state-law claims and remand[ed] with instructions to dismiss the claims on the basis that they are precluded by the LMRDA." *Id.* at 11a.

ARGUMENT

Neither of the two Questions Presented—the first going to the jurisdiction of the court of appeals to review the remand order in this case, and the second going to the merits of the court of appeals' ruling that the remand here was improper—warrants this Court's review. The petition for certiorari should be denied.

1. The court of appeals' ruling that there is "appellate jurisdiction [in this case] over the district court's remand order," Pet. App. 7a-8a, is both legally sound and entirely consistent with the decisions of this Court and of the other circuit courts. Equally to the point, the Sixth Circuit's reading of the district court's remand order is entirely sound and consistent, in interpretative approach, with the decisions of the other courts of appeals. Contrary to the Petitioner, the

court of appeals did *not* "'second-guess' the opinion of [the] district judge" in an effort to go behind the "stated reason" for a remand order. Pet. 11. Thus, the decision below does not even raise the question tendered by the Petitioner with the claim that "the courts of appeals are deeply divided." *Ibid.*

(a) The court of appeals relied upon two settled legal propositions in concluding that it had jurisdiction to review the remand order in this case.

The first, and more general, of these propositions is that 28 U.S.C. § 1447(d), which limits appellate review of remand orders, must be read in conjunction with 28 U.S.C. § 1447(c), which states the grounds for remand. As the court of appeals put it:

> "Although . . . the plain language of 28 U.S.C. § 1447(d) suggests that remand orders concerning cases removed pursuant to 28 U.S.C. § 1441 are never reviewable, . . . the Supreme Court's ruling in *Thermtron Products, Inc. v. Hermansdorfer*, 423 U.S. 336 (1976), dictate[s] that §§ 1447(c) and (d) must be read together. Section 1447(c) directs the district court to remand a removed case 'if at any time before final judgment it appears that the district court lacks subject matter jurisdiction.' [R]eading § 1447(d) in conjunction with (c), . . . § 1447(d) prohibits review only of remand orders issued pursuant to a finding, under § 1447(c), that the district court lacked jurisdiction." Pet. App. 5a-6a (quotation marks, ellipses and citations omitted).

The second legal proposition—which is a corollary of the first—is that an unreviewable remand pursuant to § 1447(c) is a remand based on *lack of subject matter jurisdiction at the time of removal* and *not* a remand based on some other ground:

> "For a case to be deemed remanded pursuant to § 1447(c), the district court must find that subject matter jurisdiction was lacking at the time of removal and

> then remand on that basis; otherwise, § 1447(d) will not prohibit appellate review of the district court's remand order. Where a district court had proper jurisdiction at the time of removal, but events occurring after removal make remand to the state courts appropriate, § 1447(d) does not bar appellate review of the district court's remand order." Pet. App. 6a (citations omitted).

The conclusion that follows from these propositions is that "a remand order is reviewable on appeal when the district court concludes that the action was properly removed but that the court lost subject matter jurisdiction at some point post-removal." Pet. App. 8a, quoting *First Nat'l Bank of Pulaski v. Curry*, 301 F.3d 456, 460 (6th Cir. 2002). Citing the instant case as an example, the Sixth Circuit recently explained that this "post-removal-event" doctrine justifies "reviewing the district court's remand order when a party had 'expressed his intent to abandon a claim,' thus converting a case over which the court had subject matter jurisdiction into a case that the district court could remand in its discretion under § 1367." *Dawalt v. Purdue Pharma, L.P.*, 397 F.3d 392, 401 (6th Cir. 2005).

As explained in *Dawalt* and as applied in the instant case, the "post-removal-event" doctrine has been universally accepted by the circuit courts. *See Adkins v. Illinois Central Railroad*, 326 F.3d 828, 832-833 (7th Cir. 2003) (reviewing circuit precedent); *Poore v. American-Amicable Life Ins. Co.*, 218 F.3d 1287, 1291-92 (11th Cir. 2000) (same). Indeed, the Petitioner does not argue to the contrary but rather proceeds on the assumption that the "post-removal-event" doctrine is correct. *See* Pet. 11 ("there is appellate jurisdiction to review remand orders that are issued in cases in which there was unquestionably federal jurisdiction at the time of removal, but later events have eliminated the claims that afforded a basis for the removal").

(b) Given the dichotomy between appealable remand orders and unappealable remand orders, the courts of appeals must determine in each particular case whether the remand order was based on the § 1447(c) lack of subject matter jurisdiction ground or on some other ground. According to the Petitioner, in making that determination "the courts of appeals are deeply divided on the question of whether, and to what extent, the court should 'second-guess' the opinion of a district judge who has decided to remand a case for a stated reason that facially complies with section 1447(c), and determine whether the real reason for remand might have been one not within the statute, and hence subject to appellate review." Pet. 11.

The Petitioner overstates the conflict among the circuits with respect to this second level issue of the correct method for interpreting district court remand orders. It is true that "the Fifth Circuit has taken a strict approach" of interpreting remand orders according to their terms. 16 *Moore's Federal Practice* (3d ed.) § 107.44[2][c][i] pp. 107-255. However, most of the circuits that the Petitioner would array against the Fifth Circuit are similarly "strict" in their interpretative approach. *See, e.g., Rubel v. Pfizer, Inc.*, 361 F.3d 1016, 1020 (7th Cir. 2004) ("If the judgment is one remanding for lack of jurisdiction, the reasoning in the opinion is not independently reviewable."). And, as we show, the court of appeals followed the "strict" approach in interpreting the remand order in this case.

In distinguishing itself from "the Ninth Circuit[, which] will look beyond the language of the remand order to all the surrounding circumstances, in determining whether the [remand] order" was based on a non-§ 1447(c) ground, the Fifth Circuit has stated that it "will only review remand orders if the district court affirmatively states a non-1447(c) ground for remand." *Solely v. First Nat'l Bank of Commerce*, 923 F.2d 406, 408 (5th Cir. 1991) (quotation marks and cita-

tions omitted). But the court of appeals here did not enter this contested terrain by "look[ing] beyond the language of the remand order to all the surrounding circumstances." *Ibid.*

Far from "second-guessing" the district court's opinion, the court of appeals proceeded on the basis that "the real reason for remand" in this case was the "stated reason" appearing in the district court's opinion. Pet. 11. This is the approach advocated by the "strict" Fifth Circuit—and accepted as proper by every other circuit—which holds that whether a district court has "stated a § 1447(c) basis for remand" is to be determined on the basis of "[a] plain and common sense reading of the . . . remand order." *Heaton v. Monogram Credit Card Bank*, 231 F.3d 994, 997 (5th Cir. 2000).

"[T]he opinion of [t]he district judge" in this case does *not* provide a "a stated reason [for the remand] that facially complies with section 1447(c)." Pet. 11. The district court did *not* cite § 1447(c) as providing the basis for remand. Nor did the district court use § 1447(c)'s operative phrase—"lacks subject matter jurisdiction"—in explaining the remand.

Rather than invoke § 1447(c) or refer to a lack of subject matter jurisdiction at the time of removal, the district court squarely based the remand order on a non-§ 1447(c) ground, the occurrence of a post-removal-event:

> "The UAW removed this case to the district court, arguing that there was federal question jurisdiction over Davis's claim for reinstatement because the claim constituted a request for postelection relief under the exclusive jurisdiction of the LMRDA. Only after finding that Davis had 'conceded that the remedy of reinstatement was not available to him' did the district court conclude that the case must be remanded because subject matter jurisdiction had been lost. The district court found that Davis had expressed his intent to abandon this claim in his memorandum supporting his remand motion, which

was filed over a month after the case was removed from the state court.

> "On this point the district court may have been mistaken, however, because Davis did not amend his complaint to remove his claim for reinstatement and has made clear his intention to preserve the claim. Regardless, the district court plainly relied on Davis's alleged concession in remanding the case, finding that it 'goes a long way toward mooting the defendants' argument' of preemption by the LMRDA." Pet. App. 7a-8a.[3]

It was precisely because "the district court remanded this case only after finding that a post-removal event had deprived it of subject matter jurisdiction" that the court of appeals concluded it could "exercise appellate jurisdiction over the district court's remand order." Pet. App. 8a.

The most the Petitioner can say in response to the court of appeals' reading of the district court's opinion is that "[a]nother interpretation of the district court's opinion is that the district judge's mistake of fact about whether Davis had changed his prayer for relief did not affect its view of jurisdiction." Pet. 15. The proposition that there may be "another interpretation of the district court's opinion" falls far short of establishing that the court of appeals' interpretation is not the "plain and common sense reading of the . . . remand order," *Heaton*, 231 F.3d at 997, and hence the strict-interpretation reading of the district court's order. And, the truth is that the Petitioner's proffered interpretation of the district court's order cannot be squared with the district court's "stated reason" for remanding this case. *Id.* 11.

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[3] The district court explained why it had left two motions for the state court to decide by noting that it had "conclude[d] it does not have jurisdiction over the case." Pet. App. 13a-14a. In context, it is apparent that the district court reached this conclusion on the basis that the plaintiff had dropped his claim for reinstatement and did so after the plaintiff's post-removal expression of an intent to drop that claim.

The district court recognized that LMRDA Title IV provides "the exclusive remedy for challenging the results of a Union election," Pet. App. 29a, and that court decided that "removal of this case was not well-taken" only after determining that that "Davis's state-law claims do not attack the ultimate validity of any Union election results," *id.* at 32a. The district court determined that "Davis's prayer for back pay, alone, [did not] give[] rise to LMRDA preemption," *id.* at 30a, because "[a]n award of damages that includes back pay would not necessarily imply that one or more of the Union's election results were invalid," *id.* at 31a-32a. But the same cannot be said of an order reinstating Davis to elected office. That remedy would, as the district court acknowledged, validate the results of the election Davis won and invalidate the results of the subsequent elections held in the reconfigured regions. *Id.* at 29a. The sole reason given by the district court for disregarding this basis for LMRDA preemption was that "Davis concede[d] that the remedy of reinstatement is not available to him." *Id.* at 30a. And, this "concession"—to the extent it was made at all—was made *after* removal "[i]n response to the defendants' LMRDA argument" against remand. *Ibid.*

(c) Having failed to advance a plausible interpretation of the remand order as based on § 1447(c), the Petitioner changes tack and argues that review should be granted to determine whether the appellate courts "have jurisdiction to review remand decisions that are based on section 1367(c) once the admittedly federal claims on which removal was based have been removed from the case." Pet. 17. That is not a question warranting this Court's attention.

The Petitioner grudgingly admits that "the courts of appeals have generally concluded" that there is jurisdiction to review such remand decisions. Pet. 17 (citing decisions of the Third and Seventh Circuits). The truth of the matter is that no fewer than eight circuits have addressed

this question, and every one has held that "28 U.S.C. § 1447(d) is inapplicable to remand order[s] made pursuant to 28 U.S.C. § 1367(c)." 16 *Moore's Federal Practice* (3d ed.) § 107.44[2][d] pp. 107-262-263 n. 53.5 (citing precedent from the Third, Fourth, Fifth, Sixth, Eighth, Ninth and Eleventh Circuits). Thus, as the Seventh Circuit has observed, "appellate jurisdiction to review [a § 1367(c) remand order] is firmly established." *Baker v. Kingsley*, 387 F.3d 649, 656 (7th Cir. 2004).

The Petitioner's sole ground for bringing this well-settled circuit court law to this Court is that two sets of "decisions [—one set involving § 1447(e) and the other set involving § 1445—] support the contention that section 1447(d) is not limited to protecting against review of remands under only one small subsection of the Congressional scheme governing removal and remand." Pet. 17-18. This is a complete *non sequitur*.

The first set of decisions stands for the unremarkable proposition that, in reading § 1447(d) *in para materia* with the other subsections of § 1447, "there is no 'reason to treat the grounds for remand authorized by § 1447(e) in a different way than the Supreme Court treated the grounds authorized in § 1447(c).'" *Stevens v. Brink's Home Security, Inc.*, 378 F.3d 944, 948 (9th Cir. 2004), quoting *Washington Suburban Sanitary Commission v. CRS/Sirrine, Inc.*, 917 F.2d 834, 836 n. 5 (4th Cir. 1990). And, the second set of decisions does no more than reveal some disagreement among the circuits over whether "a remand pursuant to § 1445(c) is based on a procedural defect rather than a lack of subject matter jurisdiction," *New v. Sports & Recreation, Inc.*; 114 F.3d 1092, 1097 n. 7 (11th Cir. 1997), a point which is significant in determining whether a motion for remand under § 1447(c) must be made within thirty days of removal, *id.* at 1096-97.

In short, neither set of decisions has anything to do with—much less provides a basis for calling into question—the

legally distinct set of decisions "firmly establish[ing]" that there is "appellate jurisdiction to review [a § 1367(c) remand order]." *Baker*, 387 F.3d at 656.

2. Having spent twenty pages arguing that the court of appeals lacked jurisdiction to review the remand order in this case, the petition ends with a five page coda arguing that this Court should review the appellate court's ruling that removal was proper on "complete preemption" grounds. Pet. 20-25. There is no basis for this Court to review the court of appeals' ruling.

Significantly, the Petitioner does not quarrel with the general proposition that "Title IV of the LMRDA mandates that challenges to a previously conducted union election may only be brought by the Secretary of Labor." Pet. App. 8a. Nor does the Petitioner deny that "the indisputably federal questions of 'whether Davis was elected' and 'whether the defendants eliminated Davis's position' [would] need [to] be answered in order to adjudicate Davis's claims." *Ibid.*

Rather, the Petitioner argues, at the most abstract level, that for "'a federal statute wholly [to] displace[] [a] state law cause of action through complete preemption,'" it is not sufficient that the federal statute both preempts state law and provides a substitute federal remedy, as LMRDA Title IV most assuredly does, but that it is necessary for "Congress [to] create a federal, private cause of action that it intended to substitute for [the] state cause of action." Pet. 21, quoting *Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 8 (2003).

The Petitioner did not raise this "private cause of action" argument in the court of appeals below. "Where issues are neither raised before nor considered by the Court of Appeals, this Court will not ordinarily consider them." *Pennsylvania Dept. of Corrections v. Yeskey*, 524 U.S. 206, 212-213 (1998), quoting *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 147 n. 2 (1970). And, the Petitioner has cited no extraordinary

circumstances that would justify making an exception in this case.

For the sake of completeness, we note that there is no case law that is contrary to the court of appeals' LMRDA Title IV complete preemption ruling or that endorses the Petitioner's gloss on the "complete preemption" doctrine. Indeed, the decisions the Petitioner cites read *Beneficial Nat'l Bank v. Anderson, supra*, "to extend the complete preemption doctrine to any federal statute that both preempts state law and substitutes a federal remedy for that law, thereby creating an exclusive federal cause of action." *Briarpatch Ltd. v. Phoenix Pictures, Inc.*, 373 F.3d 296, 305 (2d Cir. 2004), citing Richard H. Fallon, Jr., *et al.*, *The Federal Courts and the Federal System* 22 (5th ed. Supp. 2003) (*Anderson* "suggests that any federal statute that both preempts state law and provides a substitute federal remedy creates 'an exclusive cause of action' that falls within the complete preemption doctrine.").

As we have already suggested, there is no question that, with respect to union elections, LMRDA Title IV "both preempts state law and substitutes a federal remedy for that law." *Briarpatch Ltd.*, 373 F.3d at 305. LMRDA § 403 addresses both points in terms:

> "No labor organization shall be required by law to conduct elections of officers with greater frequency or in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by this title. Existing rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections prior to the conduct thereof shall not be affected by the provisions of this title. The remedy provided by this title for challenging an election already conducted shall be exclusive." 29 U.S.C. § 483.

The "exclusive" method for "challenging an election already conducted" is "a civil action against the labor organiza-

tion as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election." 29 U.S.C. § 482(b). This civil action may be brought only by the Secretary of Labor acting on a complaint by a member of the labor organization and upon a finding by the Secretary that there is "probable cause to believe that a violation of [Title IV] has occurred and has not been remedied." 29 U.S.C. § 482(a) & (b).

"[T]he proper relationship between state and federal remedies" for "illegal election conduct" was a matter of "great concern" to Congress during the debates leading up to enactment of the LMRDA. *Trbovich*, 404 U.S. at 534 n. 6. And, in deciding to vest jurisdiction over suits "to set aside [an] invalid election" exclusively in "the district court of the United States," 29 U.S.C. § 482(b), the LMRDA Congress specifically rejected a proposal "provid[ing] that enforcement suits could be filed in either state or federal courts," *Trbovich*, 404 U.S. at 533 n. 6. It thus could not be more clear that "Congress intended the federal cause of action to be exclusive." *Anderson*, 539 U.S. at 9 n.5.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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